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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

June 5, 2015 - 9:01 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

IN RE: SEC DOCKET NO. 2015-01
Request of SEA-3, Inc.,
for an Exemption from
the Application and
Certification Requirements
of RSA 162-H.
(Prehearing conference)

PRESIDING: Michael J. Iacopino, Esq. (Brennan...)
Counsel to the Committee
(Presiding as Presiding Officer)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

APPEARANCES :**Reptg. SEA-3, Inc.**

Alec L. McEachern, Esq.
(Shaines & McEachern, PA)
James Monahan (Dupont Group)

Reptg. Counsel for the Public:

Peter C. L. Roth, Esq.
Senior Asst. Atty. General
N.H. Attorney General's Office

Reptg. the City of Portsmouth:

Jane Ferrini, Esq.

Reptg. the City of Dover:

Anthony I. Blenkinsop, Esq.

Reptg. the Portsmouth Intervenors Group:

Christopher Cole, Esq.
Richard DiPentima
Erica and Matthew Nania
Jane and John Sutherland
Robert Gibbons

Laura Byergo, *pro se*

Reptg. the Town of Newington:

John J. Ratigan, Esq. (Donahue, Tucker)

Reptg. the Great Bay Stewards:

Fred Mason

ALSO PRESENT:

Nathaniel Morse, Intern,
N.H. Attorney General's Office

Iryna N. Dore, Esq.
Brennan, Lenehan

Emily Corwin,
New Hampshire Public Radio (NHPR)

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P R O C E E D I N G

1
2 MR. IACOPINO: All right. Good morning,
3 ladies and gentlemen. We are here for the New Hampshire
4 Site Evaluation Committee Docket Number 2015-01, the
5 Petition of SEA-3, Inc. for Exemption from the
6 Certification Requirements of RSA 162-H. We are here
7 today for a prehearing conference. My name is Michael
8 Iacopino. I am the counsel to the New Hampshire Site
9 Evaluation Committee in this matter, and I will be
10 presiding over today's proceedings.

11 These proceedings will be fairly
12 informal. However, we are making a record of the
13 proceeding, as you can see. So, let's please try to speak
14 one at a time, and not speak over each other.

15 If you have not signed the sign-in
16 sheet, before you leave please sign the sign-in sheet that
17 is in the back of the hearing room. And, on there, please
18 make sure you put your e-mail and your telephone number
19 that you can be reached at.

20 Our purpose in having a prehearing
21 conference is primarily logistical. The purpose of a
22 prehearing conference is for the parties to discuss things
23 like offers of settlement, simplification of issues,
24 stipulations or admissions to issues of fact or matters of

1 proof, limitations on the number of witnesses, any changes
2 to the standard procedures of the Committee that the
3 Parties can agree on, consolidation of examination by
4 witness -- of witnesses by the Parties, and any other
5 matter which will aid in the disposition of this
6 proceeding.

7 This proceeding, at this point, is
8 solely based upon the Petition of SEA-3, Inc., for an
9 exemption from the certification requirements. We do not
10 have a formal application for a Certificate of Site and
11 Facility before the Site Evaluation Committee. RSA 162-H
12 sets forth the circumstances under which the Site
13 Evaluation Committee may exempt an applicant from the
14 requirements of the statute, and it's within that statute
15 that the issues in this case will be decided. I am not
16 one of the deciders. I am simply counsel to the
17 Committee. There has been a Subcommittee appointed in
18 this particular case. That Subcommittee is presided over
19 by Alexander Speidel, who is from the Public Utilities
20 Commission. He is a Hearings Examiner there. The other
21 parties are Roger Hawk, a public member of the Site
22 Evaluation Committee, and John Duclos, who is sitting as a
23 designee for Tom Burack, Commissioner of the Department of
24 Environmental Services.

1 So, what I'd like to do now is just go
2 around with the room, starting with the Petitioner. And,
3 I will go counterclockwise, and have everyone identify
4 themselves for the record. And, if you're here
5 representing a party, please tell us what party you
6 represent.

7 Mr. McEachern, if you could start
8 please.

9 MR. MCEACHERN: Thank you, Mr. Iacopino.
10 Good morning. My name is Alec McEachern, and I represent
11 SEA-3, Inc.

12 MR. MONAHAN: Jim Monahan, with the
13 Dupont Group, also with SEA-3.

14 MR. IACOPINO: Laura.

15 MS. BYERGO: Laura Byergo, representing
16 myself.

17 MR. MASON: Fred Mason, representing the
18 Great Bay Stewards.

19 MR. IACOPINO: John.

20 MR. RATIGAN: John Ratigan, representing
21 the Town of Newington.

22 MR. IACOPINO: And to your right?

23 MS. CORWIN: I'm so sorry. Emily
24 Corwin, NHPR.

1 MR. IACOPINO: And, I should just
2 interrupt for a moment. Just so that everybody is aware,
3 is I have given permission for these proceedings to be
4 recorded and broadcast.

5 MR. MORSE: I'm Nat Morse. I'm an
6 intern at the Attorney General's Office.

7 MR. IACOPINO: Mr. Roth.

8 MR. ROTH: Peter Roth, Counsel for the
9 Public.

10 MS. FERRINI: Jane Ferrini, for the City
11 of Portsmouth.

12 MR. BLENKINSOP: Anthony Blenkinsop,
13 City of Dover.

14 MR. IACOPINO: Mr. Cole.

15 MR. COLE: I'm Christopher Cole, on
16 behalf of the Portsmouth intervenors.

17 MR. IACOPINO: Mr. DiPentima.

18 MR. DiPENTIMA: Richard DiPentima, a
19 Portsmouth intervenor.

20 MR. GIBBONS: Robert L. Gibbons,
21 representing myself.

22 MR. IACOPINO: Okay, ma'am.

23 MS. SUTHERLAND: Jane Sutherland,
24 representing myself.

1 MR. SUTHERLAND: John Sutherland,
2 representing myself.

3 MS. NANIA: Erica Nania, representing
4 myself.

5 MR. NANIA: Matt Nania, representing
6 myself.

7 MR. IACOPINO: Okay. Now, I just have a
8 question for the folks from Mr. Cole back. Is that my
9 understanding is everybody had agreed that you would be
10 consolidated as one intervenor group. Are you all being
11 represented by Mr. Cole?

12 MR. COLE: This happened on Wednesday of
13 this week. So, that's what I tried to explain to you,
14 Mr. Iacopino, in the first instance. We haven't worked
15 out that. Mostly, I've spent my time doing a little bit
16 of reading to get up to speed on the 162-H process
17 generally speaking. I haven't yet had a chance to talk to
18 these six people. I will, at the conclusion of this, and
19 be able to report back to you and the panel at that time,
20 is that acceptable?

21 MR. IACOPINO: Yes. But I would just
22 point out that the interventions were granted and they
23 were consolidated. So that, to the extent that you're
24 going to seek some modification of that, you will have to

1 file a motion, because that's not something that I can
2 rule on, --

3 MR. COLE: I understand that.

4 MR. IACOPINO: -- or you can get
5 everybody in the room to agree, and then, if you can do
6 that, we can present that as a stipulation.

7 MR. COLE: Sorry to talk over you. I
8 don't anticipate any change to the status of them being
9 consolidated as intervenors. Thank you.

10 MR. IACOPINO: All right. Let's start,
11 I think the best way to start is to talk about timing and
12 scheduling, all right? I have taken a look at the
13 calendar. And, I've had some conversations with
14 individual Subcommittee members about availability. And,
15 we will be -- we will be required to have a final merits
16 hearing on this Petition, and given the scheduling issues
17 that I'm aware of at this point, I was hoping that
18 August 14th would be the date that could accommodate
19 everybody for a final merits hearing. I know we're smack
20 in the middle of summertime. That's why I'm raising it
21 first. I see some grimaces. Let me start over to my
22 right where I see the most grimaces. Mr. Blenkinsop.

23 MR. BLENKINSOP: Mr. Iacopino, I am
24 scheduled to be out of the office that week on vacation.

1 It's been planned with my wife and children. So, that
2 would be difficult for me. I'm the only attorney in the
3 City of Dover's office. Obviously, if it works for
4 everyone else in this room, and that's the date that's
5 best, I'll do my best to work around it. I would hate to
6 withhold it simply because, if I'm the only one with an
7 issue, I'll do my best to work around it. But I do just
8 want to raise it, that right now I'm scheduled to be out.

9 MR. IACOPINO: Is it -- though, that's a
10 Friday. So, is it the week that starts on Monday, the
11 10th?

12 MR. BLENKINSOP: Correct.

13 MR. IACOPINO: And, is it just the one
14 week or is there more?

15 MR. BLENKINSOP: It's just that week.

16 MR. IACOPINO: Okay. So, the 10th
17 through the 14th. Does anybody else have a problem with
18 August 14th? At this point, I'm anticipating it to be a
19 one-day event. Yes, Mr. Cole.

20 MR. COLE: Yes. I have the same problem
21 as him. Unfortunately, I wish it was vacation, but I'm
22 out of the office on business.

23 MR. IACOPINO: Peter.

24 MR. ROTH: I just don't think there's

1 enough time between now and then to get done what we need
2 to do. I anticipate retaining experts. The experts are
3 going to need some time to prepare. There's going to be
4 -- we're going to need time for -- a reasonable amount of
5 time for discovery. I just don't see how we can
6 accomplish that in less, you know, in basically 60 days.

7 MR. IACOPINO: Does anybody, before I
8 get to you, Mr. McEachern, anybody on the left side of the
9 room have any issues with that date?

10 (No verbal response)

11 MR. IACOPINO: Okay. Mr. McEachern,
12 your response.

13 MR. McEACHERN: I, myself, am scheduled
14 to be on vacation that week.

15 MR. IACOPINO: Ah, the best-laid plans.

16 (Laughter.)

17 MR. ROTH: September is looking better
18 all the time now.

19 MR. IACOPINO: Well, it may.

20 MR. McEACHERN: We do have a concern
21 about getting this to a hearing as quickly as possible
22 and, you know, we want to move this.

23 MR. IACOPINO: Okay. Well, I can tell
24 you that the latter part of August, the last two weeks, is

1 not available for a quorum of Commissioners. So, we would
2 be looking into September then.

3 All right. Let's work from the other
4 end then. Actually, let me ask this. Anybody who has a
5 problem with any dates in September, please raise their
6 hand? Mr. Cole. He raised his hand first, Peter. Sorry.

7 MR. ROTH: That's all right.

8 MR. COLE: I'm away for a wedding and
9 travel the week of the 21st of September. September is
10 otherwise available.

11 MR. IACOPINO: Mr. Roth.

12 MR. ROTH: Unfortunately, I can't pull
13 up my calendar right at this moment, but I have both a
14 trial scheduled for late September and/or an out-of-state
15 conference.

16 MR. IACOPINO: So, are you confident
17 that they're latter part of September or --

18 MR. ROTH: It's the latter part of
19 September. I believe the last week, or it may be that the
20 trial is calendared for the last two weeks.

21 MR. IACOPINO: Ms. Byergo.

22 MS. BYERGO: The 11th and the 14th, so,
23 the Friday and Monday, over that weekend, I'm scheduled to
24 be doing an anniversary, wedding anniversary vacation.

1 MR. IACOPINO: Okay.

2 MR. McEACHERN: Mr. Iacopino, is there
3 any possibility of July?

4 MR. IACOPINO: I doubt it. I doubt it.
5 And, that's because of other matters that the Site
6 Evaluation Committee is doing in July. And, also,
7 obviously, Mr. Roth has raised this issue that he needs to
8 do some discovery and has -- and will have experts.

9 MR. McEACHERN: Could we get perhaps
10 some clarification on the scope of the hearing, because
11 that's going to dictate what experts might be needed. We
12 have an issue of federal preemption, which is going to
13 decide the scope of the hearing. And, I think it would be
14 good if we got some guidance on that.

15 MR. IACOPINO: Ms. Ferrini.

16 MS. FERRINI: I just realized that
17 September 1st and 2nd I will be out of state taking my son
18 to college.

19 MR. IACOPINO: I understand that there
20 is an issue of preemption. And, I was anticipating that
21 the Parties would brief their respective positions with
22 regard to the issue of preemption, at least as what's been
23 forecasted from the Parties. The Petitioner, obviously,
24 has a broader view of the extent of exemption than some of

1 the other Parties do in the proceeding. And, obviously,
2 there is going to be a dispute over, I think, what the
3 extent of the federal preemption is. Although, I don't
4 think anybody disputes that there is some measure of
5 federal preemption involved here.

6 How far it extends, though, I think is
7 the issue. And, one of the issues that I see with respect
8 to that, and other people can tell me if they have the
9 same concern, is, without some discovery about facts of
10 what's going to occur on the site, it's difficult to brief
11 the issue from a legal standpoint.

12 Mr. Ratigan.

13 MR. RATIGAN: There is a 500 page
14 certified record --

15 (Court reporter interruption.)

16 MR. RATIGAN: Oh, yes. I'm sorry. John
17 Ratigan. There's a 500 page certified record that was
18 developed by the Planning Board, which has been filed in
19 this proceeding. There is no fact that I'm aware of that
20 is not in that record that could inform the Committee, or
21 the body that will make decisions on this issue, about any
22 issue.

23 MR. IACOPINO: So, I guess what I hear
24 you say, Mr. Ratigan, was that, if all of the Parties

1 stipulated to the record before the Planning Board, that
2 we could proceed right to the preemption issue, is that --

3 MR. RATIGAN: Well, I don't -- you asked
4 about "fact development". I can't imagine that there's
5 any fact development that is needed for the issue of
6 whether a waiver or an exemption should be granted. All
7 of the facts have been developed before the Planning
8 Board.

9 MR. IACOPINO: Certainly, if a party
10 disputes some of those facts, there needs to be a hearing,
11 correct?

12 MR. ROTH: Right.

13 MR. RATIGAN: I think, if people want to
14 come in and put in -- well, I'll defer to what Alec has to
15 say about this, but --

16 MR. McEACHERN: And, on that issue, I
17 don't think that the development of any facts is necessary
18 to decide the issue of federal preemption. It's an issue
19 of law, that that decides what can be regulated with
20 respect to the railroad and what can't.

21 Now, what SEA-3 has done in this matter
22 is submitted a very detailed statement from Mr. Paul Bogan
23 on the operations that will occur on the site. And, as we
24 went through the Town of Newington's Planning Board

1 process for site review approval, SEA-3 never took the
2 position that what it does on its site is beyond local or
3 state regulation under federal preemption. The issue of
4 federal preemption had to do with the activities of Pan Am
5 Railways and bringing railcars to the site.

6 MR. IACOPINO: Okay. Let me just, and
7 I'm going to just throw out an example and a question, and
8 I think, by asking the question, I'll probably get the
9 extent of disagreement with respect to the issue of
10 preemption, is is it, for instance, your position, and I
11 don't know technically if, or engineering-wise, if this is
12 an issue, but, if the Site Evaluation Committee had a
13 concern about the rate at which the propane was delivered
14 from the railcars into the Facility at SEA-3's site, is
15 that something that's preempted, because the gas is coming
16 off the railcar? That's a fact, the rate of --

17 MR. McEACHERN: If I can ask for some
18 clarification on, --

19 MR. IACOPINO: Sure.

20 MR. McEACHERN: -- when you say "the
21 rate that the propane", are you talking about the railcars
22 themselves traveling onto the site or the rate at which
23 propane comes out of the railcar?

24 MR. IACOPINO: Out of the railcar and

1 onto the site. Not the rolling of the trains, not the
2 train moving on the track. But the train unloading its
3 product into the Facility.

4 MR. McEACHERN: The actual offloading of
5 the product, from the railcar into the storage tanks,
6 is -- would be subject to this Committee's review. It's
7 detailed in Mr. Bogan's statement. And, we have not taken
8 the position that that is preempted under federal law.

9 MR. IACOPINO: Okay. All right. Well,
10 that sounds to me then that they're might be some ability
11 for the Parties to stipulate then, in terms of what --
12 what activities are preempted or not preempted. Because
13 the way that I read everything that's been filed to date
14 is that the Applicant had taken a fairly broad view of
15 what's preempted, and, obviously, the intervenors have
16 taken a very narrow view. So, if there is -- if there can
17 be agreement, maybe that's one of the things that we might
18 need to discuss here today.

19 Mr. Roth, does Counsel for the Public
20 have any view on that?

21 MR. ROTH: I don't know that we're going
22 to be able to reach an agreement on what is preempted and
23 what is not preempted today. That doesn't mean that it
24 might not be possible to do so, you know, with additional

1 working session beyond today.

2 I mean, my belief, and I think this was
3 borne out by the decision that was obtained from the
4 Transportation Safety Board, or whatever they're called.

5 MR. IACOPINO: "Surface Transportation
6 Board".

7 MR. ROTH: Is that the activities on the
8 site, you know, whether it involves a railcar or not, are
9 not preempted. It's also my belief that the Committee has
10 a right to consider the safety of the rail line coming
11 into the Facility as an element of the decision whether to
12 certificate the Facility, even if the Committee does not
13 possess the ability to directly regulate the railroad
14 itself.

15 So that, if, for example, facts and
16 expert opinion were to reveal that the rail line is not
17 sufficiently engineered or that the safety record of the
18 people who operate it is not sufficiently robust or their
19 experience in handling a large volume of propane cars is
20 not sufficient, that the Committee, without stepping into
21 any preemption land, could consider that in deciding
22 whether to allow the Facility to expand in the way it's
23 proposing to do.

24 I don't know whether SEA-3 agrees with

1 that.

2 MR. McEACHERN: We don't.

3 MR. ROTH: It seems to me, from what
4 they have said, they don't. So, see, that's where we are.
5 And, I don't know what the basis of that rather broad
6 preemption is, and that, I think, is going to have to be
7 briefed. And, I know from my past experience is that the
8 Committee has been very reluctant to decide narrowing
9 legal issues like that, but that's going to take time.

10 MR. IACOPINO: And, we have had some
11 problems on the Committee where we have briefed too early
12 on an issue, and then there were facts, and, therefore, we
13 had to litigate the issue really twice. The first time
14 around, and then a second time around when new facts are
15 brought into the proceeding.

16 My initial view of this case, when I was
17 thinking we would have a hearing in mid August, was that
18 about ten days before the final hearing, the Parties would
19 brief, would be required to brief the issue of preemption.
20 At that point, they would have the benefit of whatever
21 discovery has been done, whatever technical sessions have
22 occurred. To the extent that there might be some
23 stipulations about activities that are preempted or are
24 not preempted, that opportunity to talk would have

1 happened.

2 MR. ROTH: I think that process that you
3 just outlined would not work. Because one of my thoughts
4 is that I would retain an expert on rail safety to provide
5 at least a preliminary assessment about what the Committee
6 could learn about the rail safety issues in a full
7 certification proceeding. And, obviously, my guess is
8 that SEA-3 would object to that. And, so, we're going to
9 have to have a decision on that. And, that's going to
10 sort of bring to the front the question of preemption.

11 MR. IACOPINO: So, what you're saying is
12 you anticipate filing a motion requiring SEA-3 to pay for
13 an expert for Counsel for the Public?

14 MR. ROTH: That is correct. That one,
15 and at least one other.

16 MR. IACOPINO: Mr. Ratigan.

17 MR. RATIGAN: Again, I haven't heard any
18 facts that need to be developed. I mean, we could
19 stipulate that, this is my suggestion, I'm not suggesting
20 that SEA-3 is bound by this, we could stipulate that, of
21 course, you could learn information about the character
22 and nature and safety of the rails through a study. No
23 one disputes that. But whether or not that subject --
24 that that's something that's not preempted is an entirely

1 different matter. I don't think we need to have an
2 expert.

3 I mean, we'd agree that you could -- it
4 would be great, you could learn more information. But
5 then the question "whether this Committee has any
6 jurisdiction", I mean, let's get that issue out of the
7 way. So, I don't believe that we need to hire an expert
8 to figure that out. We could all agree that someone could
9 go out there and study the tracks and figure out what
10 their condition is. But I don't believe that there's any
11 jurisdiction over that. And, that's a legal question.

12 MR. IACOPINO: Before I get to Mr.
13 McEachern --

14 MR. RATIGAN: And, we don't need an
15 expert to tell us what the facts are.

16 MR. IACOPINO: Before I get to
17 Mr. McEachern, does anybody else want to address this
18 procedural issue? Sir, behind you, Mr. McEachern, for the
19 moment, from the Stewards. Go ahead.

20 MR. MASON: For the purposes of these
21 discussions, the Great Bay Stewards are agnostic relative
22 to SEA-3's supply line. We are not taking a position as
23 to the relative merits of the supply at the Facility via
24 ship, pipeline, rail or truck. Our concern is only that

1 the risks inherent in day-to-day operation of that supply
2 line, inclusive of the SEA-3's facilities.

3 We do not seek to have the supply
4 limited or regulated. We seek only to assure that there
5 is means to assess and monitor the risks and impacts. To
6 that end, we believe that an environmental impact study
7 and subsequent monitoring process is imperative. As RSA
8 Chapter 162-H is the statutory process by which to require
9 an impact study and subsequent monitoring, we oppose
10 SEA-3's request for exemption.

11 MR. IACOPINO: Thank you.

12 Mr. McEachern.

13 MR. McEACHERN: Thank you, Mr. Iacopino.
14 I would certainly agree with Mr. Ratigan's comments. And,
15 also point out that, in that Surface Transportation
16 Board's decision, they specifically warned against what
17 Attorney Roth is requesting, which is to attempt to
18 condition an approval based on railroad factors. I mean,
19 what he's saying is that there needs to be a study of
20 railroad safety. That's explicitly preempted under
21 federal law. And, we don't need to develop facts to make
22 that determination.

23 And, it's my view that the adjudicative
24 hearing will be a much more streamlined and focused

1 proceeding, to the extent that we can determine the issue
2 of federal preemption in advance and know what the
3 Committee's jurisdiction is.

4 MR. IACOPINO: So, it sounds to me
5 that -- I'm sorry, Mr. Cole.

6 MR. COLE: That's okay. First, I guess
7 I'll agree with Mr. Roth. I think that the determination
8 of what is the boundary, however vague or inchoate it is,
9 between what it is preempted and what is not preempted, in
10 connection with what the SEC, the Site Evaluation
11 Committee, is going to do, is an earlier, rather than
12 later thing. It will tell us what the scope of discovery
13 might or might not be.

14 Peter, I don't know if that's what you
15 were saying, --

16 MR. ROTH: Yes.

17 MR. COLE: -- but, if that is, that's
18 what I think, too.

19 In terms of facts, what experts do, and
20 I don't mean to be pedantic, but what experts do is they
21 apply their expertise to a body of facts. And, so, in the
22 development of an expert report, whether it's an expert on
23 rail safety, may be prohibited, may be preempted, maybe
24 not. And, I think it's a more nuanced thing than Alec --

1 than Alec believes anyway.

2 An expert on safety, health and welfare
3 will look at the site and its intensification and
4 expansion, and tell us what are the potential consequences
5 and what are the likelihoods of those consequences. We
6 have none of that in the 500 page record. We don't have
7 an expert who's looked at all of the consequences that's
8 possible here and what their likelihood of this thing
9 happening or not happening.

10 MR. IACOPINO: Right. But right now
11 we're not really talking about the expert. We're talking
12 about whether there should be a briefing on the legal
13 issue of federal preemption, --

14 MR. COLE: I agree.

15 MR. IACOPINO: -- before we get to
16 motions to hire an expert by Counsel for the Public, who
17 has a process that they have to go through under our
18 statute, and before we get to any determination of -- or,
19 any disclosure of facts back and forth through a discovery
20 process.

21 MR. COLE: Then, I would suggest -- Mr.
22 Iacopino, then I'd suggest briefing on this issue, so that
23 Mr. Roth and I and others can know the scope of the
24 expertise that we need to go and retain.

1 MR. IACOPINO: So, what I'm hearing --
2 and, I'm sorry, how about from the two cities?

3 MS. FERRINI: I join with the comments
4 of Peter and Chris Cole.

5 MR. IACOPINO: Okay. Mr. Blenkinsop?

6 MR. BLENKINSOP: Yes. I would agree.
7 It seems like we might as well.

8 MR. IACOPINO: All right. Well, it
9 sounds to me like all of the Parties then -- and,
10 Ms. Byergo, I know you're separate from -- I mean, do you
11 have a position whether the legal issue should be briefed
12 first?

13 MS. BYERGO: I agree that the legal
14 issue probably should be considered first. I would just
15 like to say that I think that, without benefit of counsel,
16 so I -- my language will be different, --

17 MR. IACOPINO: Uh-huh.

18 MS. BYERGO: -- but I think it is very
19 difficult for SEA-3 to, one, and at the same time, try and
20 exempt examination of its Facility and its connection to
21 the railroad, under the railroad's protections under
22 federal government, and at the same time say that it is
23 "independent of the railroad". That this site expansion
24 is independent of the railroad. This site expansion

1 request and SEA-3's intention to reverse its business
2 model appears to be inherently dependent on the safety,
3 security, and environmental behavior of the railroad, of
4 its supply chain.

5 So, it just -- we may not be able to
6 regulate the railroad, although the federal level can, but
7 SEA-3 cannot be automatically exempted from its behavior
8 on its site and its dependence on that railroad because of
9 the railroad's independence. SEA-3 has to think "are we
10 going to use this railroad as part of our supply chain?",
11 when it cannot be regulated locally. That's --

12 MR. IACOPINO: And that sounds to me
13 like what I would probably expect to see in your brief
14 with respect to the extent of the federal preemption. So,
15 it sounds to me like all of the Parties here really agree
16 that we should brief the issue of the federal preemption
17 first, get a decision from the Subcommittee on the extent
18 of the federal preemption.

19 I will raise a concern that I have is
20 that, when that occurs, and the Committee has to then
21 deliberate on a determination of the extent of federal
22 preemption, they are going to look at the record as it
23 exists for factual information. If there's no hearing
24 before them, they're going to look at what exists, and

1 they're going to use that for facts. For instance, the
2 statement that Mr. Bogan, is that --

3 MR. McEACHERN: Yes, Mr. Bogan.

4 MR. IACOPINO: -- Mr. Bogan presented in
5 the additional supplemental filing. I assume that the
6 Committee will have to look at that for the fact of how
7 the -- for instance, the propane is actually transmitted
8 from a railcar to the Facility. So, just so that
9 everybody understands that that's the position that the
10 Committee would be in at that point. And, because there
11 are some facts, that it's not really solely a legal issue.
12 I think everybody in the room would say "yes", the Federal
13 Railroad Safety Act does preempt local -- local regulation
14 of the rail. I don't think anybody in this room disagrees
15 with that. But what is the extent of activity that is
16 considered regulation of the rail is what becomes an
17 issue.

18 MR. RATIGAN: I'm not aware that there's
19 a dispute about this Committee's regulation of onsite
20 activities.

21 MR. IACOPINO: I'm not saying that there
22 is. I'm saying that there may be a dispute about the
23 facts that the Committee has to understand in order to
24 rule on the issue of preemption. That's all I'm saying.

1 But, with that warning, I mean, I am
2 fine to schedule -- let's schedule briefing then, and then
3 we'll go to the next step.

4 MR. ROTH: Mike, it seems to me that the
5 factual issues, such that they are, obviously, I don't
6 think anybody on this side of the aisle is prepared to say
7 that Mr. Bogan's statement is undisputed. That is, there
8 may be facts in the record, but they're simply one side of
9 facts, and they're not undisputed. So that we note, in
10 any memoranda or briefs about it, that to the extent that,
11 you know, the Applicant argues the voracity of Mr. Bogan's
12 statements or other things that were presented to the
13 Planning Board, that we wouldn't necessarily accept any of
14 that. And, we would suggest that further hearing and
15 process be required in order to flesh those out and
16 determine the truth --

17 MR. IACOPINO: Mr. Ratigan.

18 MR. ROTH: -- and the accuracy of those
19 things.

20 MR. IACOPINO: I'm sorry.

21 MR. RATIGAN: Again, --

22 MR. IACOPINO: I'm sorry. Let me
23 Mr. Roth finish.

24 MR. ROTH: I just did.

1 MR. IACOPINO: Okay. Sorry.

2 MR. RATIGAN: Again, I haven't heard the
3 need to develop any facts on-site, because I don't think
4 either Alec or I are taking the position that preemption
5 affects onsite activities. And, as to off-site
6 activities, I think we probably have a shared agreement
7 that additional studies could produce more information
8 than presently exists in the Planning Board record.
9 Preemption asks the question whether that information is
10 something which this Committee has jurisdiction over.
11 And, again, I don't think we need to develop facts as to
12 that, we can stipulate to that. I think Alec and I could
13 probably agree to that. But what we don't agree about is
14 the law applying to those facts.

15 MR. IACOPINO: Alec.

16 MR. McEACHERN: I would just state that
17 right now I don't anticipate that I would rely on
18 Mr. Bogan's statement in briefing the issue of federal
19 preemption, because, in my view, it doesn't involve those
20 facts. The position that we took at the Town of Newington
21 Planning Board, because the Newington Planning Board
22 wanted to regulate the railroad, that was an issue, and
23 the position that we took was that, once the railcars were
24 brought in by Pan Am and turned over to SEA-3 on-site,

1 that's when the Planning Board's jurisdiction began over
2 SEA-3's activities. Up until the point where Pan Am turns
3 over the railcars, Pan Am's activities on the rail line
4 are exclusively within the jurisdiction of the federal
5 government. And, that was the demarcation. Once the cars
6 are deposited, Pan Am leaves them there, their engine goes
7 away, SEA-3 takes over and begins the off-load. That was
8 the line of demarcation in our view, and it continues to
9 be.

10 MR. IACOPINO: Ms. Ferrini?

11 MS. FERRINI: Just commenting that the
12 certified record below is based upon planning and zoning.
13 You know, that's very different than, you know, the Site
14 Evaluation Committee's, you know, purpose of evaluating
15 whether this Project serves the public interest. So, yes,
16 you know, it's based upon the record of other proceedings,
17 but it isn't, in fact, you know, it isn't, in fact, the
18 only information that this Committee is going to consider
19 after the hearing.

20 I raise the question whether it makes
21 sense to have the hearing include the evidence and the
22 experts, and then the Committee to require briefs on the
23 federal preemption within X amount of days after that?
24 I'm just raising that for consideration.

1 MR. IACOPINO: Well, that doesn't sound
2 like the rest of the Parties agree with that. I mean, I
3 think what I was hearing was "let's brief and get a
4 decision on preemption first." That's what I thought I
5 was hearing.

6 MR. COLE: You did hear that from me,
7 but that was before you raised the concern, and I think
8 it's a good one, that the Committee will look at the facts
9 fixed in the record, which Mr. Ratigan thinks need no
10 further development whatsoever, and which I think we
11 disagree, that the facts probably need more development.

12 I think what Mrs. Ferrini is saying is
13 that a planning and zoning certified record is a far cry
14 from the mandate under 162-H, to balance numerous
15 interests, including the regulatory interests, the
16 interests of the public. So, that factual record, it's
17 imperfect.

18 So, if I could get some assurance that
19 the factual record will be used as a guide, then we can do
20 the briefing now. But, if the factual record will be
21 understood to be fixed in some way, then maybe
22 Mrs. Ferrini is right.

23 Sorry to throw this wrench into what I
24 thought was a consensus for a little while, but you raised

1 a good concern. And, I think it's one worthy of maybe
2 changing one's mind.

3 MR. IACOPINO: Mr. Roth.

4 MR. ROTH: And, I guess I would just
5 add, I am not bound by any of those facts in that record.
6 I wasn't a participant in that proceeding. And, I haven't
7 looked at that record. And, I'm not prepared to adopt it
8 or endorse it in any way.

9 MR. IACOPINO: Mr. Ratigan.

10 MR. RATIGAN: Ms. Ferrini's comments
11 aren't germane to preemption. We're saying that there's
12 been an assertion that this Committee should address
13 issues that lie outside the site and regarding rail
14 activity. And, I think you don't need to develop any
15 record to address that.

16 Or, if there is a record, I'm sure that
17 we can probably stipulate to it, to the facts that they
18 want to see developed. I mean, they want to do an
19 environmental study that's off-site. We would agree -- I
20 would agree that an environmental study could probably
21 produce additional information that wasn't before the
22 Board, but it relates to the rail activity. And, we think
23 that is an issue that is acceptable to review and analysis
24 and decision under preemption.

1 MR. IACOPINO: Mr. McEachern, did you --
2 I'm sorry, Ms. Byergo, did you want to respond?

3 MS. BYERGO: No.

4 MR. IACOPINO: I'm sorry. Go ahead,
5 Alec. I'm sorry.

6 MR. McEACHERN: I would agree with
7 Mr. Ratigan on that. And, I just don't see that there's
8 any development in the factual record that's required for
9 the federal preemption to be decided. The issue is, "can
10 the Committee require a study of the railroad as a
11 condition of this Project?" And, there's plenty of
12 federal law on point. And, I mean, I could have it
13 briefed by Monday. You know, I've been through this so
14 many times by now.

15 MR. ROTH: I think that's an interesting
16 point, Mike, in that, and this is something that I raised
17 at the public meeting, which is I think, ultimately, SEA-3
18 has already briefed this to the Transportation Safety
19 Board, and lost. And, it may be that there's a
20 misunderstanding about what our position is. And, you
21 know, my position is not that the Committee ought to
22 address the rail safety issues. But my position is that
23 the Committee ought to consider and scrutinize rail safety
24 issues. That's a far cry from regulating the railroad or

1 addressing the railroad activity in any way. It's simply
2 looking at it and considering it as part of the overall
3 impacts of the Facility, which I think is clearly within
4 its jurisdiction.

5 Now, but, you know, I think that what
6 we're seeing here is, you know, at some level, an attempt
7 to re-litigate what's in that order. And, I'm not sure
8 what light or how much weight ought to be afforded to the
9 Committee's decision on that, when the authority on it has
10 already spoken.

11 MR. IACOPINO: Ms. Ferrini, go ahead.

12 MS. FERRINI: And, I would agree. You
13 know, there seems to be this switch that turns off once we
14 mention the rail. But the standard is that, even under
15 the Planning Board, they can use their police powers. If
16 it's not unreasonably burdensome to regulate the rail,
17 then it doesn't discriminate against the railroad. So,
18 you know, to simply draw, you know, draw a circle around
19 the site and have -- and have no information relative to
20 anything beyond it is not the role of this Committee.

21 MR. IACOPINO: Okay. I've got to tell
22 you that, when I came in here, my initial determination or
23 my initial view was that we would -- that we would
24 schedule some discovery and deal with these issues, get

1 briefing on any legal issues, including the issue of
2 preemption, a short time before the final hearing was
3 scheduled, and then have the hearing on the facts and
4 allow the Subcommittee to consider any factual disputes,
5 as well as the legal issues, and issue one single order
6 addressing both the motion and any concomitant preemption
7 issues that go with it. And, as I'm hearing the
8 discussion, I think that's -- I'm back to that being my
9 recommendation for the Committee.

10 And, that may mean that Counsel for the
11 Public's got to file an interim motion to get an expert,
12 if that's, in fact, what you want to do. And, the
13 Committee will have to decide on that in the interim.

14 So, I think the way that we should
15 proceed is let's get a schedule going. Let's start with,
16 since that seems to be the first thing -- actually, what I
17 will need to do is we need to get prefiled testimony from
18 the Applicant. You're going to need to identify witnesses
19 and provide prefiled testimony supporting your Petition
20 for Exemption. I think, at that point, or very close to
21 that same point, I don't know if, Mr. Roth, if you've
22 already scouted out experts or whatnot, but you'll need to
23 get a motion in. I'm not laying dates out yet, I'm just
24 sort of going through the process. You'll need to get a

1 motion in. There will be a deadline for you to file that
2 motion, a deadline for your objection. The Committee will
3 have to determine that. In the meantime, we would allow
4 the Parties to submit data requests, and there would be a
5 deadline for answering those requests.

6 Assuming the expert issue got resolved
7 by the Committee relatively timely, there would then be
8 the requirement that the remaining Parties, not the
9 Applicant, but all the rest of the Parties, regardless of
10 what their view is, identify their witnesses and file
11 their prefiled testimony, and then we'd follow the same
12 process. The Applicant -- we'd have a technical session,
13 where the Applicant could -- well, actually, we'd have
14 data requests from the Applicant to those witnesses, and
15 then a tech session to get any answers. Followed by
16 briefing, any legal beefing, and the final hearing.

17 That's the way I think that I'm
18 recommending to the Presiding Officer that this proceed.
19 Because I do think that there might be an issue, I mean,
20 people might be able to brief the preemption issue, and
21 the Committee would make a determination on it, and then
22 we would get to a factual hearing, and then sort of the
23 facts change, and we have a situation where "okay, now we
24 have to reexamine preemption, because these are the facts

1 that we found about the issue."

2 MR. McEACHERN: Mr. Iacopino, I'd just
3 like to state that that process does present the
4 possibility that Pan Am Railways will seek injunctive
5 relief.

6 MR. IACOPINO: Even though there's no
7 determination made by this Committee until all of that has
8 been done and there's a hearing held?

9 MR. McEACHERN: That is a possibility.

10 MR. IACOPINO: Interesting.

11 MR. COLE: Well, they're not here. And,
12 if that's what they're going to do in monitoring the
13 proceedings, that's what they're going to do. The
14 schedule, anyway, that you described makes sense to me.

15 MR. IACOPINO: Anybody else wish to
16 respond?

17 MR. ROTH: I'm comfortable with that
18 process. The schedule is another matter. If you, and I
19 don't think you would do this, but, if you try to fit all
20 that in before the middle of August, I don't think that's
21 realistic.

22 MR. IACOPINO: That was my plan.

23 MR. ROTH: Yeah, you're crazy.

24 MR. IACOPINO: Now, understand,

1 understand, though, this is not a ruling on a full
2 application. We don't have a full application here. It's
3 a request for exemption. That request has got a very
4 specific statutory criteria. Obviously, it's somewhat
5 complicated by virtue of the claim of federal preemption.
6 I mean, it is somewhat complicated by that. But that
7 really, once there are facts determined, that's a legal
8 determination. And, that's the -- I mean, I don't know
9 why you think this has to be a broad, extended thing.
10 Other than, I do recognize that, if you're going to get an
11 expert, that's going to throw a couple of extra weeks into
12 the process.

13 MR. ROTH: Yes. I think "a couple of
14 extra weeks" is, maybe that's lawyer math, but I'm
15 thinking between, you know, I'd need a reasonable amount
16 of time to identify and retain them. Filing a motion is
17 not that difficult. But, then, SEA-3 is going to want to
18 file an objection to that, which we'll probably want to
19 respond to. So, just the process of retaining our experts
20 is likely to take 30 to 45, maybe 60 days, and then a
21 decision.

22 We can't proceed to file testimony or
23 even begin the report process of an expert, and it's not
24 just this one expert, but I think there will be another,

1 until there's a decision from the Committee about them on
2 the motion. So, the rest of the schedule becomes
3 dependent upon the expert process.

4 And, obviously, if the Committee can
5 turn around a decision, you know, in record time, then,
6 great. That's not been my experience. It takes time.
7 And, I'm not being critical, but I just -- the fact is, it
8 takes time. So, that's why I say to get it done, you
9 know, to get through all of this before even the middle of
10 September I think is going to be somewhat of a reach. I'm
11 not trying to prolong it. But I'm just trying to make
12 sure that there's a fair process, where we have a full and
13 fair opportunity to present the facts that we think are
14 appropriate.

15 MR. IACOPINO: What is the other type of
16 expert that you're anticipating?

17 MR. ROTH: I'm considering whether there
18 out to be an expert to evaluate the safety of the Facility
19 itself, from a materials handling and fire safety
20 perspective. So, that, you know, that also will take some
21 time. But, and again, I'm not proposing that these
22 experts be retained to provide a complete evaluation of
23 the safety of the Facility, or the safety of the railroad,
24 for that matter. And that, I think, is going to be

1 reserved for, ultimately, when there's a petition or an
2 application for a certificate from this Facility. I think
3 that the perspective of the experts at this point is
4 somewhat more preliminary and limited.

5 MR. IACOPINO: Mr. Ratigan, you had your
6 hand raised?

7 MR. RATIGAN: Since it's only people on
8 that side of the room who seem to be suggesting the
9 development -- need to develop a factual record at this
10 point, with respect to preemption -- oh, excuse me, I
11 missed a hand. But --

12 MR. MASON: I'm on the wrong side of the
13 room, apparently.

14 MR. RATIGAN: But is there a way that
15 you can request that those who would seek to develop a
16 factual record set that forth, so that the Committee can
17 evaluate it and we can respond to it and evaluate it?
18 Because I still go back to the issue that I do not
19 believe, at this juncture, there's a need to develop
20 additional facts that we can't agree to that address the
21 issue of preemption.

22 MR. IACOPINO: I'm not hearing a whole
23 lot of agreement, Mr. Ratigan. I mean, you keep saying
24 that, but I'm not hearing that from people who have a

1 different view of the Project than you do. So, I'm not --
2 I am not optimistic about that. Mr. McEachern.

3 MR. McEACHERN: I would question of what
4 facts could there be that are going to be relevant to the
5 issue of federal preemption. They say, "well, you know,
6 there's a need to develop facts." What facts? All the
7 facts are known that are necessary to decide the issue of
8 federal preemption. Can this Committee regulate the
9 operations of Pan Am Railways on the Newington Branch
10 line? That's the question.

11 MR. ROTH: That's not the question.

12 MR. IACOPINO: So, see, we don't even
13 agree on the question.

14 MR. RATIGAN: Well, let Mr. -- may I
15 suggest that Mr. Roth articulate as to preemption, just as
16 to preemption --

17 MR. ROTH: We're not talking about
18 preemption anymore. We're talking about the exemption.
19 And, I think that the Presiding Officer has provided an
20 outline of how we're going to get to the exemption
21 hearing. And, I'm okay with the overall structure of the
22 outline. I'm just talking about the amount of time it's
23 going to take to get there.

24 So, the idea that, you know, these

1 experts that I'm talking about are designed to or are
2 necessary to address preemption, that's just not -- I'm
3 not saying that at all. I'm talking about the hearing on
4 the exemption.

5 MR. RATIGAN: Well, if we're in
6 agreement on that, then I'd leave it to you to decide
7 what's the most expeditious way to proceed. Because, if
8 he's no longer saying that he needs an expert to determine
9 preemption, then you could decide whether you want to
10 proceed with that first or if you think it's more
11 expeditious to have a complete hearing on all the
12 contested issues.

13 MR. ROTH: I never said that I needed
14 experts to determine preemption.

15 MR. IACOPINO: Okay. Mr. McEachern, can
16 you have -- can you identify, because you have the burden
17 of proof, your witnesses and have prefiled testimony to
18 the Committee by June 15th? That's a Monday. And, it's a
19 question. It's not -- I'm not saying "have it by then",
20 I'm asking.

21 MR. McEACHERN: I could certainly
22 identify them. But, in terms of having their testimony,
23 that's pushing it.

24 MR. IACOPINO: How long do you think you

1 would need to prepare the prefiled testimony of the
2 witnesses that you're going to present to support your
3 Petition?

4 MR. McEACHERN: I would request three
5 weeks from today.

6 MR. IACOPINO: Okay. So, that would be
7 the 26th.

8 Mr. Roth, how long do you think it would
9 take before you can file a motion for the experts that you
10 are considering? And, I'm not encouraging you to
11 necessarily do it. I know you're considering it.

12 MR. ROTH: I don't want to take too long
13 or shortchange myself on the time that it may require.

14 MR. IACOPINO: That's why I'm asking
15 you.

16 MR. ROTH: To file the motion, I would
17 need at least until the first of July. Part of it is
18 going to depend on what comes up in their testimony.

19 MR. IACOPINO: I understand.

20 MR. ROTH: Because, if they present
21 facts in their testimony that I think needs an expert
22 review, then I may need additional time. And, you know,
23 if they -- they're at the end of the month, and I say "at
24 the end of the month", you know, then I'm really stuck. I

1 won't be able to produce a motion to contest facts that I
2 didn't see until their testimony came in. So,
3 realistically, a month from today.

4 MR. RATIGAN: Mr. Chair, could I ask a
5 question of Alec?

6 MR. IACOPINO: Yes.

7 MR. RATIGAN: Do you anticipate putting
8 in any additional testimony on issues that are not already
9 in the certified record, which is part of this proceeding?
10 I understand you might present it in a different format.

11 MR. McEACHERN: I --

12 MR. RATIGAN: I raise that question
13 simply because Mr. Roth seems to want to need a lot of
14 time. And, I think most of the facts are already
15 developed.

16 MR. ROTH: I disagree with that. And,
17 I'm not going to go digging through that record to
18 determine what experts I need to file based on that
19 record. That's just not reasonable.

20 MR. IACOPINO: And, I'm not going to --

21 MR. ROTH: I want to do it based on his
22 testimony.

23 MR. IACOPINO: Neither I nor the
24 Committee is going to tell anybody what they need to do in

1 order to prepare.

2 The question put to Mr. McEachern is,
3 if, given the -- I think I understand Mr. Ratigan's
4 question is, given the record as he's presented so far, I
5 mean, you will need witnesses, because there's got to be
6 somebody --

7 MR. McEACHERN: Oh, certainly.

8 MR. IACOPINO: -- who will be subject to
9 cross-examination. I think Mr. Ratigan is suggesting to
10 you you might be able to do that sooner. But, I mean, I'm
11 not trying to put any pressure on you at all, but I
12 don't -- there will have to be some prefiled testimony.

13 MR. RATIGAN: Yes. No, I wasn't
14 suggesting that. I understand Mr. Roth is loath to read a
15 500-page document. But, you know, we --

16 MR. IACOPINO: Look, everybody here is
17 trying to work through this. Everybody has their own
18 interests to represent. Let's keep it to that, without
19 making comments about other person's interests or
20 concerns, okay?

21 MR. RATIGAN: This is not *tabula rasa*.
22 All of these issues were presented to the Planning Board.
23 And, it just strikes me that it shouldn't take that long
24 for people to -- I mean, I understand that Mr. Roth didn't

1 participate, but there's a fulsome record. Matters are
2 decided on records all the time. I think, if he handed
3 the record over to an expert, the expert would have plenty
4 of materials to work with.

5 MR. IACOPINO: Okay. But, like I
6 said, I'm not going to --

7 MR. RATIGAN: Sure.

8 MR. IACOPINO: -- I'm not going to
9 dictate to anybody how they prepare for the case. I don't
10 know, he obviously doesn't have an expert yet. So, what
11 the expert can do or can't do is something that will be
12 discussed between him and his expert. And, if it causes a
13 problem, he'll have to let the Committee know.

14 MR. ROTH: I looked at that record.
15 And, if I presented that to the expert, he would run
16 screaming.

17 MR. IACOPINO: We're not going to
18 discuss the record right now. But we're not going to
19 discuss the record right now. That's not the purpose of
20 this. Our purpose is purely logistical at this point.
21 We're trying to get this thing scheduled. The Committee
22 doesn't want it really hanging around for a very long
23 time. I'm sure that none of the Parties do either.

24 Because either at the end of -- at the

1 end of our proceeding, you'll either be -- the Applicant
2 will either be required to file an application or they
3 will be told that they're exempted from RSA 162-H. And,
4 getting to that decision as promptly as possible, giving
5 everybody the right to be heard, is my goal and the goal
6 of the Committee. And, that's what we're going to try to
7 do.

8 I'm sorry, Mr. McEachern. I cut you
9 off.

10 MR. McEACHERN: That's quite all right.
11 Just, I guess, to answer Attorney Ratigan's question. I
12 expect that the majority of Mr. Bogan's prefiled testimony
13 will address issues that have come up in the certified
14 record. But there may be additional issues, such as the
15 EPA Risk Management Plan that he may go into more detail
16 on. So, until I sit down with him and go through it, I
17 won't know for certain. But that's my initial thought.

18 MR. IACOPINO: So, you're still
19 comfortable with the 26th of June?

20 MR. McEACHERN: I am right now.

21 MR. IACOPINO: Okay. All right. And,
22 Peter, you indicated that you could have a motion for an
23 expert 30 days from today. That would put us at June --
24 that puts -- that's on a Sunday. So, I would say June

1 3rd -- well, June 3rd --

2 MR. ROTH: July.

3 MR. IACOPINO: I'm sorry, July 3rd is a
4 holiday, at least that's what my calendar says. So, I
5 guess that would be July 6th. Do you think that you would
6 be able to do any kind of data requests before that expert
7 is hired, Peter?

8 MR. ROTH: Yes, I do.

9 MR. IACOPINO: Okay. Are the Parties --
10 do the Parties want to do written data requests? We have
11 dealt with the issue of discovery a couple of different
12 ways before the Site Evaluation Committee. In some cases,
13 we have had data requests, which are written
14 interrogatories, questions that get posed from one party
15 to the other, it's generally answered by the witnesses who
16 prepared the prefiled testimony. And, there's a deadline.
17 The questions are proffered. There's a deadline for the
18 answers. And, then, we've generally had a technical
19 session sometime thereafter. A technical session is an
20 informal session where we try to get all the parties in
21 the room with whatever the -- whoever their witnesses are,
22 so that there can be a back-and-forth question-and-answer
23 period, that is generally an informal process.

24 So, in some cases, folks have forgone

1 the written part of the process, and we've gone directly
2 to the technical session. We just recently did that, I
3 believe, with the Antrim Wind jurisdictional proceeding.

4 So, I guess I'm just going to go around
5 the room. And, I'll start with folks over here, on my
6 right, and ask whether they prefer a period of time for
7 interrogatories or data requests? Peter?

8 MR. ROTH: I do.

9 MR. IACOPINO: Okay. Jane?

10 MS. FERRINI: Yes, I would, too.

11 MR. IACOPINO: Mr. Blenkinsop?

12 MR. BLENKINSOP: Yes. Sure.

13 MR. IACOPINO: Mr. Cole, yes? Okay.

14 Ms. Byergo and --

15 MS. BYERGO: Go with the consensus.

16 MR. IACOPINO: Stewards? Okay. John?

17 MR. RATIGAN: I defer to Alec.

18 MR. IACOPINO: And Alec?

19 MR. McEACHERN: Well, I don't anticipate
20 right now asking any interrogatories of the intervenors.

21 MR. IACOPINO: You haven't seen their
22 witnesses yet.

23 MR. McEACHERN: But -- that is correct.
24 I would like to state for the record that, with respect to

1 any questions submitted to SEA-3, SEA-3 does not have
2 information on the railroad and doesn't have authority to
3 get that. And, that's -- and that, you know, leads us
4 back to the preemption issue.

5 MR. IACOPINO: It does. But I don't
6 think we're going to get any kind of consensus on when --
7 on deciding the preemption issue in advance. And, that
8 may be, and that may be answers that you get, and there
9 may be some litigation over the extent of discovery and
10 whatnot. You know, that I can't say. The questions
11 haven't been asked yet. The prefiled testimony has not
12 been filed yet. I appreciate the advance notice. But, at
13 this point, we kind of have to sort of proceed.

14 So, I guess what I'm going to ask then,
15 if data requests from the non-Applicant Parties, and that
16 would be everybody other than SEA-3, if we have the
17 prefiled testimony on June 26th, how about July 17th?
18 That's -- I'm sorry, July 10th. That's two weeks.

19 MR. ROTH: Mike, one of my concerns
20 about that is, if I file a motion for retaining experts on
21 July 6th, I won't have an order granting that authority
22 any time before July 10th.

23 MR. IACOPINO: I understand that.
24 That's why I had asked you if you anticipated that you

1 could file data requests without the expert.

2 MR. ROTH: I could do some. But I would
3 need an additional opportunity, once the expert was
4 retained, to consider what they needed. And, I guess I
5 should have been more clear about that. But I can't forgo
6 that opportunity to have my experts tell me what kind of
7 questions I might want to be asking about subjects within
8 their expertise. There are other general, you know, sort
9 of broader questions that I'm sure I could ask, you know,
10 I could produce data requests next week. But --

11 MR. IACOPINO: Okay. So, what you're
12 saying is, is you might be seeking an additional round of
13 data requests from the Applicant upon -- if you choose to
14 and are approved the use of an expert?

15 MR. ROTH: Yes. And, I guess I would
16 like to have that baked into the procedural order, so that
17 I don't have to come back and fight for that in the motion
18 practice. So, --

19 MR. IACOPINO: Well, before we fight the
20 motion practice, there's a lawyer sitting across the aisle
21 from you who might be agreeable to answering those data
22 requests, once -- when and if an expert is hired. So,
23 let's not jump right to the fact that you suspect there
24 will be some objection over it. Okay?

1 So, all right. Well, let's do this
2 then. Let's set July 10th for data requests to the
3 prefiled testimony filed by the Applicant. And,
4 generally, there's a 10-day answering period. So, that
5 would be 7/20 for answers. What day is that? That's a
6 Monday. Okay.

7 MR. COLE: I'm sorry, could you say that
8 again.

9 MR. IACOPINO: There will be -- you'll
10 be permitted until -- can you -- he's going to file a
11 motion for experts. Do you mind if we shorten the time
12 for objection to that to the 10th? That will give you
13 four days. If you need the time, that's fine. We'll make
14 it the 16th.

15 MR. McEACHERN: Let's make it the 16th.

16 MR. IACOPINO: Okay.

17 MR. McEACHERN: And, I'll do my best to
18 get a response in as quickly as possible.

19 MR. IACOPINO: Okay.

20 MR. ROTH: You could probably write that
21 objection now.

22 MR. IACOPINO: Probably would want to
23 know who the experts are, though. Okay. And, then, for
24 the non-Applicant Parties, at this point, by July 20th, --

1 MR. ROTH: Did you do a tech session?

2 MR. IACOPINO: I haven't yet. That's
3 what I'm getting to.

4 MR. ROTH: Okay.

5 MR. IACOPINO: And, that's the next
6 question, too. But, by July 20th, the Applicant should
7 have provided at least the basic information that the
8 Parties are looking for, leaving aside the matter of
9 Counsel for the Public's expert that needs approval from
10 the Committee, once he identifies one. So, there are two
11 ways we can do tech sessions. We can do a tech session
12 subsequent to receiving that information, where the
13 Applicant's witnesses are at the tech session, or we can
14 wait and do a single tech session with everybody's
15 witnesses there prior to the final hearing.

16 I'm again going to go around the room
17 and ask what position people take on that. In other
18 words, having, instead of two tech sessions, having a
19 single tech session, after information has been traded
20 amongst the Parties in both directions. Peter?

21 MR. ROTH: I would support the single
22 tech session at the later date.

23 MR. IACOPINO: Ms. Ferrini?

24 MS. FERRINI: I agree.

1 MR. BLENKINSOP: That's fine with me.

2 MR. COLE: I'll just go along. I can
3 tell you, in my gut, I think that a more orderly way is to
4 do two. To do one, and then the other. But, if they want
5 to do it that way, that's fine.

6 MR. IACOPINO: Mr. Ratigan?

7 MR. RATIGAN: Whichever is more
8 efficient.

9 MR. IACOPINO: Okay. All right. Okay,
10 Mr. McEachern?

11 MR. McEACHERN: Favor a single session.

12 MR. IACOPINO: Do you? Okay. All
13 right. So, I am looking around August 7th for that.
14 Actually, maybe that -- excuse me. Maybe that August 14th
15 date is better for that. Because that would build in some
16 time that, if your expert is -- oh, that's right. We have
17 vacations, right?

18 MR. ROTH: Yes. We have attendance
19 problems, including Attorney McEachern.

20 MR. COLE: Can I ask a stupid question?
21 Maybe another stupid question, in my case. Are we talking
22 about having a single technical session after Alec
23 discloses his witness or witnesses, after the request for
24 experts is made, after our data requests go to Alec's

1 witnesses, and after then the prefiled testimony of these
2 folks, if any, is filed, and Alec does the same with data
3 requests? The technical session is after all of that?

4 MR. ROTH: That's how I understood it.

5 MR. IACOPINO: Oh. So, you wanted a
6 single technical session? I'm talking to Peter right now,
7 not -- you wanted one at the end?

8 MR. ROTH: Yes.

9 MR. IACOPINO: Okay.

10 MR. ROTH: I thought that made the most
11 sense, in terms of -- because I wouldn't want to have a
12 technical session --

13 MR. IACOPINO: I misunderstood.

14 MR. COLE: Just, Mike, I'm reacting to
15 the August 7th, to get all that in, and then have the
16 technical session August 7th.

17 MR. IACOPINO: I misunderstood what some
18 of the Parties said.

19 MR. ROTH: Yes. My understanding was --
20 you know, here's my concern of it. I wouldn't want to
21 have a technical session before my experts had been
22 retained and the testimony went in.

23 MR. IACOPINO: I just misunderstood. My
24 apologies. Was that what your intention, too,

1 Mr. McEachern, one technical session?

2 MR. McEACHERN: One technical session.

3 MR. IACOPINO: Okay. I'm sorry. That's
4 my problem then. Not my problem, that was my mistake.
5 Okay. So, if the answers are on 7/20, then what we would
6 need is the identification and prefiled testimony from the
7 non-Applicant witnesses would be the next thing that would
8 be scheduled. Which, in the normal course, we would
9 normally require it about ten days after you've received
10 the answers. But I'm going to build an extra week in,
11 because I think there might be some flux with respect to
12 Counsel for the Public's expert position. So, I am
13 looking at how does August 7th sound for the provision of
14 prefiled -- identification of witnesses and prefiled
15 testimony for the other Parties, other than the Applicant?

16 MR. ROTH: That is difficult for me,
17 without knowing when I'm going to have an order allowing
18 my expert to be retained. Because I can't, right now,
19 anticipate that they're going to be willing to start
20 writing testimony before they're guaranteed payment. And,
21 then, I have time off that I'm taking, like the 30th, the
22 31st, and the 3rd and the 4th of August. So, that creates
23 a real cram for me.

24 MR. IACOPINO: You're in that week of

1 the 10th, though, Peter?

2 MR. ROTH: I am. I am in the week of
3 the 10th.

4 MR. IACOPINO: So, how does the 17th
5 sound?

6 MR. ROTH: The 17th of August? Is that
7 what you just said, Chris?

8 MR. COLE: Yes.

9 (Court reporter unable to hear full
10 statement.)

11 MR. COLE: -- to the end of that week.

12 MR. IACOPINO: August 17th is a Monday.

13 MR. ROTH: Yes. Assuming that we have a
14 timely order from the Committee.

15 MR. IACOPINO: I understand that. Now,
16 Mr. McEachern, I know that you may not have data requests
17 for some of the other parties' witnesses, but I suspect
18 you will, if Counsel for the Public does retain an expert.
19 What we have here is, it's basically two weeks is pretty
20 much the schedule that we're on. So, two weeks from
21 August 17th would be August 31st for getting data requests
22 to the prefiled -- the Parties who have filed prefiled
23 testimony for witnesses. And, I say that, because
24 sometimes parties don't file, then, obviously, you

1 wouldn't have to submit data requests to them. So, data
2 requests from SEA-3 to other Parties. And, then, that
3 gets us to September 10th for answers.

4 And, I think that we could do a
5 technical session then as soon as September 18th. Of
6 course, to do the technical session I need to get a room.
7 So, I have to make sure that either this room or another
8 room, here or somewhere, some other state agency is
9 available. So, it's approximately September 18th.

10 And, at that point, the next thing that
11 I think I would schedule would be -- does anybody expect
12 that tech session to take more than a day?

13 MR. ROTH: I hope not.

14 MR. COLE: Yes, I hope not.

15 MR. McEACHERN: I hope not.

16 MR. IACOPINO: Okay. How about
17 October 2nd for the filing of any legal memoranda by all
18 Parties, and a final hearing to be held sometime after
19 October 2nd?

20 MR. COLE: Can you make it October 5?
21 I'm just coming back from vacation, and I'll have the --

22 MR. IACOPINO: I doubt that we would do
23 it on a Monday anyway.

24 MR. COLE: No, I mean the legal brief,

1 legal memorandum by October 5, just give me the weekend to
2 work with?

3 MR. IACOPINO: Yes. No problem.

4 MR. COLE: Thank you.

5 MR. IACOPINO: And, so that the -- the
6 Site Evaluation Committee hearings usually tend to be
7 later in the week, usually on Thursday or Friday, because
8 the PUC tends to do things more early in the week.
9 Although, that could change any time. So that there would
10 be a final merits hearing sometime hopefully quick, soon
11 after October 5th. And, I would have to check with the
12 Subcommittee members for their availability. Anybody have
13 any problems with the weeks of October 5, October 12, and
14 October 19? October 12 is Columbus Day. So, it certainly
15 wouldn't be that day, and that's a Monday. The 5th, the
16 12th, and the 19th are all Mondays.

17 MR. ROTH: That's not a State holiday,
18 by the way.

19 MR. IACOPINO: I know. I got a Google
20 calendar here that comes up with it. So, I'm not hearing
21 any problems with it, so --

22 MR. ROTH: Hold on, hold on. I'm
23 checking the calendar.

24 MR. IACOPINO: Oh. Sorry.

1 MR. ROTH: I've got Stone Age technology
2 here.

3 MS. FERRINI: I'm unavailable on the
4 19th of October.

5 MR. COLE: If it was, in fact, late in
6 the week of October 12 and October 19, then I could do it.
7 You know, meaning the 14, 15, 16 and 21, 22, 23 all could
8 work.

9 MR. ROTH: I'm okay in October, I think.

10 MR. IACOPINO: All right. So, we're
11 going to schedule a hearing for a Wednesday, a Thursday or
12 a Friday during one of those three weeks. And, that's
13 what I'm going to canvas my Committee on in terms of their
14 availability. So, the hearing will occur either the 7th,
15 8th and 9th, 14th, 15th or 16th, and 21st, 22nd or 23rd.
16 At this point, I'm asking the Committee for one full day.
17 We have never had an exemption hearing that's gone beyond
18 one full day. So, hopefully, we won't start any records.

19 If there becomes an issue with the
20 experts, either way, either you need more time or
21 additional time to get requests to his expert, or you're
22 going to need additional time or ask additional requests
23 for -- once you've hired an expert, I ask that the two of
24 you first speak to each other and see if you can agree on

1 providing that information by a date and just let me know
2 informally.

3 MR. ROTH: Okay. Sure.

4 MR. IACOPINO: By e-mail. If you cannot
5 agree, I think what we'll have you each do is file a
6 motion, and we'll try to get the Presiding Officer to rule
7 on it as soon as possible. That will be an issue that I
8 don't need the full Committee to make that decision,
9 Mr. Speidel can determine that on his own. So, I think
10 that's probably the best way to deal with, if the
11 expert -- I think the timetable we have will be close for
12 you, Peter, with the expert. But I think it's doable.
13 But, again, if there is additional time needed, please
14 speak to each other first. And, then, if you can't agree,
15 then file something.

16 And, keep me abreast of what's going on.
17 If there's some dispute that I might be able to help you
18 resolve about it, give me a call and I'll do the best that
19 I can to help you resolve it. But my goal here is to get
20 this hearing completed, with everybody having the ability
21 to be heard and to present their views, and for the
22 Committee to have a full record upon which to make its
23 decision.

24 Just so you know, it's not unusual, in

1 these types of proceedings, that if the final hearing
2 concludes at a reasonable time during the day, for the
3 Committee to begin going into deliberations immediately.
4 That will probably be included in any hearing notice that
5 goes out. Sometimes they won't. Sometimes they'll say
6 "we're going to come back next week to deliberate." It
7 all is going to depend upon the timing and logistics of
8 where we're at at that particular time.

9 Any questions from anybody about
10 scheduling?

11 (No verbal response)

12 MR. IACOPINO: Okay. There are other
13 issues that we should address at a prehearing conference.
14 I'm not sure that any of them are really germane in this
15 particular proceeding. But I think we've made an attempt
16 to talk about simplification of the issues. And, it
17 doesn't appear that we came to any agreement on
18 simplifying the decision about preemption.

19 Are there any other issues, other than
20 preemption, that any of the Parties think discussion today
21 might result in some kind of simplification of, either the
22 process or the substance of what the Committee might
23 consider?

24 (No verbal response)

1 MR. IACOPINO: Okay. Stipulations and
2 admissions to issues of fact or proof or methods of proof.
3 Does anybody have anything they wanted to address with
4 respect to those sorts of stipulations?

5 (No verbal response)

6 MR. IACOPINO: I encourage the Parties
7 that, if you think that there are facts that can be
8 stipulated to in this record, of course, the best
9 stipulations are those that are stipulated to by all of
10 the parties. But, if there are facts that can be
11 stipulated to, make an effort to speak to the other
12 Parties, and see if you can come up with a written
13 stipulation to present to the Committee, it always makes
14 their job easier.

15 Limitation on number of witnesses. At
16 this point, Alec, is it really only Mr. -- I keep
17 forgetting his name, I'm sorry -- Mr. Bogan that you
18 intend to present?

19 MR. McEACHERN: Well, we have a fire
20 safety engineer.

21 MR. IACOPINO: Okay.

22 MR. McEACHERN: We have the actual
23 engineer who prepared the site plan. So, I'm going to,
24 you know, have to go back to my office and think it

1 through and come up with the people --

2 MR. IACOPINO: So, as many as three?

3 MR. McEACHERN: And, possibly Joe Rose,
4 from the Propane Association.

5 MR. IACOPINO: Okay.

6 MR. McEACHERN: So, you know, --

7 MR. IACOPINO: All right. The
8 Portsmouth intervenors, Mr. Cole, and I know you're brand
9 new to the case, but was there any consideration on your
10 folks hiring an expert or anything like that?

11 MR. COLE: I haven't had the discussion
12 with them yet. And, haven't had the discussion of the
13 question I thought you were going to ask, and that is,
14 "will all six of them provide prefiled testimony?" I
15 hope -- I'm hopeful not, but I got to talk to them about
16 that. I assume we'll have one --

17 MR. IACOPINO: I would encourage you to
18 consolidate as much as possible.

19 MR. COLE: Absolutely. You know, and
20 most of them, I believe, are similarly situated. I might
21 be wrong about that. But we'll talk about it in the
22 anteroom when we --

23 MR. IACOPINO: And, just so everybody
24 knows, generally, when there is, if more than one of your

1 witnesses or one -- more than one of your parties files
2 prefiled testimony, it's been our tradition to basically
3 take them as a panel for cross-examination.

4 MR. COLE: Uh-huh.

5 MR. IACOPINO: It just seems to make
6 things move quicker.

7 MR. COLE: Sure.

8 MR. IACOPINO: And, Alec, we have done
9 that with applicants with, you know, pending applications
10 as well, if it makes sense. Sometimes it doesn't make
11 sense, if they're talking about totally different issues.

12 How about the Cities? Experts?

13 MS. FERRINI: I think that depends on
14 the granting of the AG's motion to some extent as well,
15 and also what the witnesses suggested by SEA-3, --

16 MR. IACOPINO: Well, just so you're
17 aware --

18 MS. FERRINI: -- and consulting with the
19 intervenors as well, as far as whether we will -- we'll
20 ask an expert or request an expert.

21 MR. IACOPINO: Just so all the Parties
22 are aware, because there's a process that Counsel for the
23 Public has to go through to employ an expert, that we do
24 give him some leeway that we may not give to other

1 parties. Because, presumably, you can all go out and, you
2 know, whatever your resources are, hire your experts
3 today. He has to come seek permission from the Committee.
4 And, that's why we give him that extra leeway. And, he's
5 right, is, in the past, sometimes there's been delay in
6 decisions being issued on motions like that, which does --
7 I know it concerns Counsel for the Public, and it concerns
8 me as well. But, unfortunately, it's happened, and I
9 can't say it will never happen again. So, --

10 MS. FERRINI: We've received the message
11 that, if we're going to do this, we've got to do it right
12 away, and we need to decide immediately. Thank you.

13 MR. IACOPINO: And that goes for both
14 the Cities and the rest of the Parties as well. And, --

15 MR. ROTH: Mike, on this point. One of
16 the issues in granting an exemption is whether the public,
17 the general public, believes that the existing processes
18 are sufficient. And, frankly, I think we demonstrated
19 more than satisfactorily that the general public does not
20 support the exemption. And, I don't know why we're doing
21 this from -- because, in light of that, I don't know why
22 we're doing this at all. But, be that as it is, we are
23 doing it. And, I think, in terms of limiting the numbers
24 of witnesses that might give testimony, in particular,

1 from the intervenor side, we need to be mindful of that.
2 Because in their, you know, numerosity actually does
3 matter, and -- or it seems to actually matter, I'm not
4 sure if it needs to, but it seems to.

5 So, I think, you know, Attorney Cole's
6 mission may be to fill that factual area with some
7 testimony from various people, rather than simply have one
8 person say, you know, "I talked to all my neighbors and
9 they don't think there ought to be an exemption." And,
10 I'll leave that to him. But I don't want to create a
11 restriction on what -- how we fill that evidentiary
12 bucket.

13 MR. IACOPINO: No. But I don't think we
14 need to hear 500 people repeat the same postcard testimony
15 either. Or, they can put it on a postcard and provide it
16 to us. So, that's part of what we're doing here. Just
17 trying to get a grip on what the extent of the testimony
18 to be expected is, and if there are ways to streamline it.
19 Because the important thing, at the adjudicative phase, is
20 for the Committee to get the information so that they can
21 make their judicial determination with respect to whether
22 or not that particular factor is satisfied or not. And,
23 so, that's -- and the other factors as well.

24 So, I'm not meaning to try to cut down

1 on anybody's ability to present witnesses or to put in
2 evidence. I'm just trying to streamline the process as
3 much as possible. We have held a public hearing already.
4 I suspect that we will take any public comment from
5 non-parties to the proceeding at the time of the
6 adjudicative proceeding. We have done that in the past,
7 either at the beginning or at the end, at the conclusion
8 of the evidentiary process. And, you know, that we
9 will -- I'm fairly sure we will have a record that, one
10 way or the other, provides information and is informative
11 to the Committee on the factor of what the general public
12 believes, with respect to whether or not this Petition for
13 Exemption would satisfy the goals of the statute.

14 Actually, John, in just a minute.
15 Ms. Byergo, are you anticipating any kind of expert
16 witness or any witnesses other than yourself?

17 MS. BYERGO: One.

18 MR. IACOPINO: And, what kind of
19 witness?

20 MS. BYERGO: To be determined.

21 MR. IACOPINO: I'm sorry?

22 MS. BYERGO: To be determined.

23 MR. IACOPINO: Okay. But, I mean, is it
24 somebody you're going to present as an expert or --

1 MS. BYERGO: Yes.

2 MR. IACOPINO: Okay. And, how about the
3 Stewards?

4 MR. MASON: We wish to reserve the right
5 to have one or two witnesses. And, they would be
6 nationally recognized experts on environmental matters.

7 MR. IACOPINO: Okay. And, I'm not --
8 look, I'm not trying to limit anybody's ability to call
9 witnesses. I'm just trying to get an idea of what type of
10 witnesses we're going to have, so that everybody is
11 prepared and has an idea of what we're going to be doing.

12 Mr. Ratigan, how about Newington?

13 MR. RATIGAN: Well, I have a question
14 first. What evidentiary weight can the Committee give to
15 the certified record developed before the Planning Board?

16 MR. IACOPINO: What evidentiary weight
17 can the Committee give to it?

18 MR. RATIGAN: Yes. In other words, does
19 all -- does the information that the Committee consider
20 only be that in the form of prefiled testimony or can they
21 give weight to the information that was presented and
22 developed during the Planning Board process?

23 MR. IACOPINO: I think it has to be
24 formally presented to the Committee in one way or another,

1 so that, I mean, I think there has to be some testimony
2 about it, so that there can be cross-examination.

3 MR. RATIGAN: Okay. So that --

4 MR. IACOPINO: But how much --

5 MR. RATIGAN: So, the Town may have a
6 number of witnesses.

7 MR. IACOPINO: Okay.

8 MR. RATIGAN: I mean, they hired
9 independent consultants, they hired -- they had their fire
10 chief. There may be members of the Planning Board who
11 will testify to things that were presented during the
12 Planning Board proceedings that should be given weight.

13 MR. IACOPINO: Okay.

14 MR. RATIGAN: So, I'll have to review
15 that.

16 MR. ROTH: It looks like your one-day
17 hearing isn't going to happen.

18 MR. IACOPINO: It may or may not. I
19 think that if -- well, I mean, there are certainly ways to
20 deal with the issues that he's talking about. I mean,
21 somebody can append and make the record an exhibit to
22 their testimony. And, you know, I mean, it's up to you
23 guys how many. I'm not telling you how many witnesses to
24 call or what types. I'm just trying to get everybody to

1 have an idea of what we're dealing with.

2 And, if we're going to need another day,
3 we'll do another day. I mean, I'm not -- you know, I
4 would prefer not to, I don't think it -- I don't think it
5 should be necessary. But, if it is, that's what we will
6 do.

7 I think we've pretty much addressed
8 consolidation of examination of witnesses by Parties and
9 limitation of witnesses. There's been a consolidation
10 order already, as far as intervenors go.

11 And, I can go back to number (1), are
12 there any offers of settlement out there?

13 (No verbal response)

14 MR. IACOPINO: I guess not.

15 MR. McEACHERN: Well, Attorney Ferrini
16 and I have talked about the idea in lofty terms, but
17 nothing concrete. And, I don't know whether there's
18 any -- you know, we have so many parties here now that, I
19 mean, it's probably unrealistic.

20 MR. IACOPINO: Uh-huh. All right.
21 Well, just so you understand, I mean, you can present
22 settlement agreements that aren't fully agreed upon by all
23 parties. And, the Committee would determine whether or
24 not to adopt that. Obviously, all parties would have a

1 voice and the right to be heard.

2 But, you know, obviously, it's best if
3 there is some substantive settlement that can be
4 accomplished, you know, especially, and I don't mean to
5 diminish anybody else in this proceeding, but, if you've
6 got the Applicant and the City, you know, their -- it sort
7 of represents kind of both interests, it may be that
8 everybody wants to consider what it is that they consider
9 to be a valid and valuable settlement. So, I just throw
10 that out for other folks, that if you, you know, and
11 oftentimes we see this with Counsel for the Public and an
12 applicant come up with a settlement. And, you know,
13 sometimes people -- sometimes other parties object, but
14 many times a lot of intervenors say "that's a good idea"
15 and they fall in line.

16 So, what I guess I'm saying is I don't
17 want to discourage the Parties from pursuing any
18 settlement that you might be able to achieve, even if you
19 don't think you'll get complete agreement from everybody.
20 Knowing what the Parties can agree on is something that's
21 important to the Committee, and something that they would
22 certainly consider. And, also, to the other Parties, who
23 might not be on the forefront of that agreement, urge them
24 to consider, you know, who's making the agreement and what

1 their particular role is, and determining whether or not
2 you should sign on or object to a settlement agreement.

3 Iryna, have I -- is there anything that
4 I have missed? Does anybody have anything else they wish
5 to address? Mr. Cole.

6 MR. COLE: One thing. Mr. McEachern
7 submitted a request for site inspection or site walk.
8 And, I assume, we don't have any objection to that,
9 probably a good idea for everybody, that will be more
10 closely approximate to the hearing, I take it?

11 MR. IACOPINO: I will tell you that in
12 virtually -- I can't think of a time when the Siting
13 Committee, and, of course, understand we have different
14 variations of the Committee in different proceedings, I
15 can't think of a time that they have ever not gone on site
16 when there was a request for it, --

17 MR. COLE: Yes.

18 MR. IACOPINO: -- when there is going to
19 be construction. But I can go around the room right now
20 and see if there's -- and I'm not setting a date, but go
21 around the room and see if there is any objection to the
22 Subcommittee doing a site visit. And, my guess is, it
23 probably would be closer in time to the proceeding. It's
24 not going to be this week or next week.

1 MR. COLE: So, I think my folks don't
2 have an objection to it. I do think it needs to be closer
3 in time after facts are elucidated a little bit.

4 MR. IACOPINO: Does anybody have an
5 objection to it?

6 MS. BYERGO: Just a question.

7 MR. IACOPINO: Ms. Byergo.

8 MS. BYERGO: Yes. If the Subcommittee
9 were to do a site visit, would it be the Subcommittee only
10 or would the intervenors be invited to participate in that
11 site visit?

12 MR. IACOPINO: Traditionally, all of the
13 parties have participated. However, we have had
14 situations where there, and I don't know if these would
15 exist in this particular case, but we have had situations
16 where there are maybe parts of the facility that the --
17 that the owner of the facility has either security
18 concerns or safety concerns that may not be conducive to
19 having 20 people in a particularly small place. We've had
20 that with some of the wind facilities.

21 So, you know, generally, all of the
22 parties are invited. Yes, sir.

23 MR. MASON: And would it be restricted
24 to the site itself or could it, in fact, include

1 potentially affected other areas? I realize the federal
2 exemption weighs in.

3 MR. IACOPINO: Well, it's not only a
4 federal exemption. I mean, the Committee has the
5 authority to go on site. Actually, this Facility is not
6 the subject of a certificate, obviously. So, we don't
7 have necessarily the authority to go in. I would have to
8 do more research on that. But, clearly, they're inviting
9 us in. I don't know that they have the authority to let
10 us go on anybody else's property.

11 MR. McEACHERN: We don't.

12 MR. IACOPINO: So, that's something
13 that, you know -- I'm somewhat familiar with this site,
14 because I've been doing this since 1998, and I did the
15 Newington -- the Newington gas facility. We went down
16 there for a site visit. And, you know, I believe you're
17 going to be able to see a lot of that railroad, if that's
18 what your concern is, from on site, if my recollection of
19 it is correct.

20 MR. MASON: Can non-Applicant Parties
21 invite the Committee to another visit of another site?

22 MR. IACOPINO: Sure. But make sure it's
23 a site that you have the ability to bring us onto. And,
24 it's got to be relevant. I mean, you know, --

1 MR. MASON: Right.

2 MR. IACOPINO: -- don't invite them to
3 my house.

4 MR. MASON: Point taken.

5 MR. IACOPINO: I mean, it would have
6 to -- you'd have to, I mean, if you're going to take us
7 miles away, for one reason or another, you're going to
8 have to link that to the reason for this proceeding, which
9 is the Request for Exemption and the factors that the
10 Committee must consider with respect to exemption.

11 MR. MASON: I think it would be
12 5.7 miles away, at the Great Bay Discovery Center, if that
13 were to occur.

14 MR. IACOPINO: Okay. Peter, I'm sorry.

15 MR. ROTH: Mike, I don't have any
16 objection to the request for a site inspection. Though, I
17 would point out that Attorney McEachern didn't seek the
18 assent to the motion as the rules require. And, I just,
19 you know, at this point I'm not going to make a fuss about
20 that. But, if motions come in without seeking assent, we
21 will object to them on that basis.

22 MR. IACOPINO: That's actually a good
23 point for everybody. One of the reasons why we ask the
24 parties to seek assent is because it also let's the

1 Committee know whether something is actually going to be
2 litigated or not. So, please, in the future, when you
3 file motions, seek the assent of the Committee [Parties?],
4 I know there's a lot of parties, it's hard to do. I think
5 the easiest thing to do is create yourself an e-mail list
6 of the adjudicative Parties, Parties to the adjudicative
7 proceeding, and, you know, do it by e-mail, is what I
8 found to be the easiest. And, if you don't get a response
9 within 24 hours, say "I didn't get a response from that
10 party." That's all.

11 You know, but that's the -- I think
12 that's the easiest way to do it with multiple parties like
13 we have here. This one's actually nothing compared to the
14 Antrim Wind one, where I think we have 19 intervenors.
15 So, they seemed to get it done pretty well there, although
16 there's -- somebody forgets every now and then. But
17 please do that.

18 And, please make sure that, when you
19 file data requests or the answers to data requests, that
20 they go to the other Parties, they do not go to the
21 Committee members. Okay? They will only go -- the
22 Committee members will only review the data requests and
23 answers to them if they are formally admitted as exhibits,
24 either by attaching them to prefiled testimony or offering

1 them as an exhibit during the course of the hearing. So,
2 the discovery is just amongst the Parties. I would
3 appreciate a copy. And, the reason why that is is because
4 that gives me the ability to sort of keep track of where
5 we are and to know if there's going to be bumps in the
6 road going forward.

7 Does anybody have any other question?
8 Oh, and again, some folks, please, when you file things,
9 file them with Jane Murray at the Department of
10 Environmental Services. Okay? We had a number of things
11 filed at the PUC. Ultimately, at some point in the
12 future, you will file documents with the PUC. But that
13 has not yet been formalized. The powers that be in the
14 State agencies are working on that. And, there's, I
15 guess, even more legislation coming down the pike about
16 the workings of the Committee.

17 So, please, when you file the things,
18 please give them to Jane Murray, at the Department of
19 Environmental Services. And, if anybody needs her e-mail,
20 telephone number, address, you can see me after this
21 proceeding.

22 Does anybody have any other issues they
23 wanted to raise for this prehearing conference?

24 MS. BYERGO: I'm sorry, but just a point

1 of clarification. Because you said "discovery happens
2 among the Parties, we should file our data requests with
3 the other Parties directly." Should we also include Jane
4 Murray with those?

5 MR. IACOPINO: No.

6 MS. BYERGO: But we should include you?

7 MR. IACOPINO: Me, but not Jane Murray.

8 Yes.

9 MS. BYERGO: Okay. So, you'll be given
10 us your e-mail or specific contact?

11 MR. IACOPINO: Most everybody should
12 have it, but, yes. Anybody who needs it, I can provide it
13 to you. I'll say it now for the record. It's
14 *miacopino@brennanlenehan.com*. That's m-i-a-c-o-p-i-n-o at
15 *brennanlenehan.com*. Brennan is B-r-e-n-n-a-n, Lenehan,
16 L-e-n-e-h-a-n.

17 Does anybody have any other issues?
18 Mr. Blenkinsop.

19 MR. BLENKINSOP: Is it safe to assume
20 that Ms. Murray's recent e-mails contain everyone's e-mail
21 addresses or should I not make that assumption?

22 MR. IACOPINO: Please double check.

23 MR. BLENKINSOP: Okay.

24 MR. IACOPINO: Okay?

1 MR. McEACHERN: They do not, right now.

2 MR. IACOPINO: We try to keep up on it,
3 but, as the service lists change, she has to change two
4 different documents, the actual formal service list and
5 her e-mail list. And, sometimes they don't both get
6 changed.

7 MR. BELANGER: Okay.

8 MR. IACOPINO: But double check. It's
9 the responsibility of the party to make sure that it's
10 served on all the other parties. So, if you see that
11 anybody is missing, or you have any questions, give me a
12 call, or give Jane a call, either one. You know, she
13 tries to stay on top of it, but she only does that on a
14 part-time basis. Her real duties are under the Drinking
15 Water portion of the Department of Environmental Services.

16 MR. ROTH: Mike, will you issue a
17 procedural order out of this meeting?

18 MR. IACOPINO: Assuming that the
19 Presiding Officer agrees with this schedule, yes.

20 MR. ROTH: Okay. Thank you.

21 MR. IACOPINO: Well, there will be one
22 issued anyway.

23 MR. ROTH: Yes.

24 MR. IACOPINO: Assuming that he agrees

1 with these dates, that will be the procedural order.

2 MR. ROTH: Thank you very much.

3 MR. IACOPINO: Any other questions from
4 anybody or issues they wish to have addressed?

5 (No verbal response)

6 MR. IACOPINO: All right. I want to say
7 "thank you" to your court reporter, because I made him go
8 longer than is fair.

9 But I guess we will adjourn. And,
10 everybody have a nice weekend.

11 MR. COLE: Thank you.

12 MR. ROTH: Thank you.

13 **(Whereupon the prehearing conference was**
14 **adjourned at 10:41 a.m.)**

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